

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JAMES PLATTE,

Plaintiff,

Civil Action No.
08-CV-15146

vs.

HON. BERNARD A. FRIEDMAN

OTSEGO COUNTY SHERIFF'S DEP'T,
COUNTY OF OTSEGO,
ERIN HOUSE,
AMY KLEPADLO,
REGINA THERIAULT,
PATRICIA A. HOUSE and
KENT HILLEY,

Defendants.

/

OPINION AND ORDER ACCEPTING
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

This matter is presently before the court on (1) the motion of defendants Morse and Theriault to dismiss or for summary judgment [docket entry 16]; (2) the motion of defendants Otsego County Sheriff's Department, County of Otsego, Klepadlo and Hilley for summary judgment [docket entry 23]; and (3) the motion of defendant House for summary judgment [docket entry 24]. Magistrate Judge Charles E. Binder has submitted a Report and Recommendation ("R&R") in which he recommends that these three motions be granted. Plaintiff has filed objections to the R&R. The court "must determine de novo any part of the magistrate judge's disposition that has been properly objected to." Fed. R. Civ. P. 72(b)(3).

Plaintiff, a prison inmate in the custody of the Michigan Department of Corrections, alleges in his *pro se* complaint that defendants have "falsely imprisoned" and "illegally seized" him

based on various felony charges. From the copy of the felony complaint that is attached to plaintiff's complaint, it appears that plaintiff was charged on October 30, 2008, with assault with intent to commit murder, failure to stop at the scene of an accident resulting in serious impairment or death, and aggravated domestic violence, based on acts committed by plaintiff on or about August 27, 2006. Plaintiff alleges that defendant House, the prosecuting attorney, signed the complaint and authorized a warrant for plaintiff's arrest; that defendant Klepadlo, an Otsego County Sheriff's deputy, signed the complaint as the complaining witness and arrested plaintiff; that defendant Theriault, a state magistrate, endorsed the warrant; that defendant Morse, a state judge, arraigned plaintiff; and that defendant Hilley, a county jail employee, took plaintiff's fingerprints and mug shot. *See* Compl. ¶¶ 17-26. Plaintiff claims defendants have violated his Fourth, Eighth and Fourteenth Amendment rights. He seeks compensatory and punitive damages.

The magistrate judge recommends that the court grant summary judgment for defendants Morse and Theriault because they are entitled to judicial immunity. He recommends that the court grant summary judgment for defendants Klepadlo and Hilley because they did not violate plaintiff's constitutional rights and for defendants Otsego County Sheriff's Department and County of Otsego because there can be no municipal liability in the absence of an underlying violation of rights. Finally, the magistrate judge recommends that the court grant summary judgment for defendant House because she is entitled to prosecutorial immunity.

Having reviewed the R&R and plaintiff's objections, the court shall follow the magistrate judge's recommendation and grant summary for all of the defendants. Plaintiff's "case" is built on the simple fact that he has been charged with various criminal offenses. For the reasons explained in the R&R, plaintiff has no viable claim against any of the defendants. Accordingly,

IT IS ORDERED that the motion of defendants Morse and Theriault to dismiss or for summary judgment is granted.

IT IS FURTHER ORDERED that the motion of defendants Otsego County Sheriff's Department, County of Otsego, Klepadlo and Hilley for summary judgment is granted.

IT IS FURTHER ORDERED that the motion of defendant House for summary judgment is granted.

S/Bernard A. Friedman _____
BERNARD A. FRIEDMAN
SENIOR UNITED STATES DISTRICT JUDGE

Dated: May 12, 2009

I hereby certify that a copy of the foregoing document
was served upon counsel of record by electronic and/or first-class mail.

S/Carol Mullins
Case Manager

Detroit, Michigan